

BQC-93-028

Date: April 7, 1993 BQC-93-028

To: Nursing Homes NH 16

From: Susan Wood, Deputy Director
Bureau of Quality Compliance

Subject: Wisconsin Estate Recovery Program: Personal Accounts of Deceased Nursing Home Medicaid Residents

Many questions have arisen regarding the personal accounts of Medicaid residents, the Wisconsin Estate Recovery Program and federal regulation requiring the conveyance of such funds upon death of the Medicaid resident. This memo will address those questions and provide further clarification regarding the estate recovery program.

One portion of the Estate Recovery Program, under s. 867.035 Wis. Stats., allows the Department to collect the funds in the resident's personal account upon the death of the Medicaid resident directly from the nursing home by submitting an affidavit to the nursing home when:

- the recipient is not survived by a spouse or a minor or disabled child and
- the balance of the account is \$2000 or less after burial costs are paid.

Recently the question has been raised whether there is a conflict between the federal nursing home regulation governing the conveyance of resident personal funds upon death and the state law governing the recovery of Medicaid funds by the Department by use of affidavit.

Under s. 867.035, Wis. Stats. the affidavit in the Estate Recovery Program may not be submitted until 90 days have passed since the date of the recipient's death and only if no other probate proceeding has been initiated.

On the other hand, Federal regulations 42 CFR 483.10(c)(6) require: "upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate."

While these laws use different time limits, they can be read and implemented together. If the circumstance allows the Department to recover personal funds by affidavit, it is the Department's position that a nursing home will have met its obligation to convey a resident's funds, if the nursing home has informed the Department, in writing, within 30 days after the date of death, of the Medicaid recipient's death and the amount of the funds remaining in the resident's account.

Implementation of Notification to the Estate Recovery Program

A. Nursing Home Notification of Death

Attached to this memo you will find a form entitled "Estate Recovery Program Notification of Death". The nursing home is required to notify the Department via this form of the death of a Medicaid resident within 30 days of the date of death who meets the following criteria:

- does not have a surviving spouse or a minor or disabled child and

- the balance in the resident account after burial expenses have been paid is \$2000 or less.

In the forgoing instance, the attached written notification should be completed by the nursing home and forwarded to the address on the bottom left hand corner of the document. It is the Department's position that when this notification has been made by the nursing home, the nursing home's obligation under 42 CFR 483.10 to convey the resident's funds within 30 days of death "to the individual or probate jurisdiction administering the resident's estate" has been met.

B. Notice to Nursing Home to Retain Resident's Funds

Upon receipt of the notification, the Department will advise the nursing home:

- of the Department's intent to collect the resident funds when 90 days have passed since the resident's date of death
- to retain the resident's funds until receipt of affidavit from the Department instructing otherwise.
- that the 30 day obligation has been met.

See attached sample of notice to nursing home.

C. Affidavit From the Department

When the 90 days have passed, the Department will send the nursing home an affidavit claiming the funds and advising the nursing home to transmit the funds to the Department.

D. When Heirs Are Present

In those situations where an heir presents the nursing home with an affidavit to collect the personal fund account of a deceased Medicaid resident whose funds would be recoverable by use of an affidavit, we are asking the nursing home to inform the heir of the Estate Recovery Program. A brochure is enclosed which may be shared with the heir. Further brochures may be obtained by contacting the Estate Recovery Program, P.O. Box 309, Madison, WI 53701.

When an heir collects the personal fund account of a deceased Medicaid resident, complete the enclosed "Estate Recovery Program Heir Information" form and return it to the address indicated in the bottom left corner of the form. The Estate Recovery Program can submit an affidavit to the heir to collect those funds.

E. Proposed Legislation

The Department has proposed legislation to enable the Estate Recovery Program to collect from deceased Medicaid resident accounts within 30 days of death. If and when the change goes into effect, you will be notified.

Should you have any questions regarding the Estate Recovery Program you may contact Dan Wasilewski, Estate Recovery Program at (608) 266-2446 in the Bureau of Health Care Financing. Should you have questions concerning your facility and the application of this process, you may contact the Field Operations Manager responsible for your facility.